UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *18 January 2011*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1,43-47,49-52 and 60-67* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1,43-47,49-52 and 60-67* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *1/6/2011*.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

1.   The following is a final office action upon examination of application number 10551102.

Claims 1, 43-47, 49-52 and 60-67 are pending and have been examined on the merits discussed

below.

Response to Arguments

2.   Applicant's arguments with respect to claims have been considered but are moot in view

of the new ground(s) of rejection.

3.   In the previous Office Action mailed September 28, 2010, notice was taken by the

Examiner that certain subject matter is old and well known in the art. Per MPEP 2144.03(c),

these statements are taken as admitted prior art because no traversal of this statement was made

in the subsequent response. Specifically, it has been taken as prior art that: it is old and well

known to collect data using a television set top box over a nodal television distribution network

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claim 1, 43-47, 49-52, 60, 62, 63 and 65-67 rejected under 35 U.S.C. 103(a) as being

unpatentable over Hofmann et al, US 7328216 in view of Cerrato, US 7092926.

As per claim 1, Hofmann et al teaches providing, by a computer, a database containing a plurality of user input pattern profiles representing a group of users of a terminal device, wherein the computer communicates with the terminal device over a network, the network comprising one or more of the Internet and a nodal television distribution network, wherein each user of the group is associated with one of the plurality of user input pattern profiles; detecting a user input pattern based upon use of the terminal device by a current user; dynamically matching the user input pattern of the current user with one of the user input pattern profiles contained in the database; identifying the current user based upon dynamic matching of the user input pattern generated by the current user with one of the user input pattern profiles; processing each user input pattern profile to identify a demographic type; providing a plurality of biometric behavior models wherein each biometric behavior model identifies a unique demographic type; comparing each user input pattern profile against the plurality of biometric behavior models to match each user input pattern profile with one of the biometric behavior models such that each user input pattern profile is correlated with one demographic type; and generating an audience analytic based upon the identified demographic types. (see abstract; columns 17 and 18 wherein user input is collected based on usage of a terminal device; user profiles are detected and matched with previously stored profiles which considers demographic information. the user profiles are used to generate an analysis of users to determine interests, recommendations, etc.)

Hofmann et al does not explicitly teach matching the user in put pattern by comparing a partial user input, as a current user input comprising the partial user input is being generated by the current user, with one of the user input pattern profiles contained in the database. Cerrato (column 7, lines 26-32) teaches an on-the-fly matching process to match a stored clickstream

profile with one as it is generated by the user. It would have been obvious to one of ordinary

skill in the art at the time of the invention to include in the system of Hofmann et al the ability to

match a stored clickstream profile with one as it is generated by the user as taught by Cerrato

since the claimed invention is merely a combination of old elements and in the combination each

element merely would have performed the same function as it did separately, and one of ordinary

skill in the art would have recognized that the results of the combination were predictable.

As per claim 43, Hofmann et al teaches the user input pattern of the current user

comprises clickstream data (column 17, lines 1-20).

As per claim 44, Hofmann et al teaches the clickstream data relates to particular Web

sites visited by the user or the duration of visits to the Web sites (column 17, lines 1-20).

As per claim 45, Hofmann et al teaches the database providing step comprises generating

a user input pattern profile for each user based upon clickstream data generated by the user when

using the terminal device (column 17, lines 1-20).

As per claim 46, Hofmann et al teaches the user input pattern comprises one or more of

user keystroke data, mouse usage data and remote control usage data (column 17, lines 1-20).

As per claim 47, Hofmann et al teaches the terminal device comprises one of a computer

and a set top box (column 17; abstract).

As per claim 48, Hofmann et al teaches the steps are implemented in a computer, and the

computer communicates with the terminal device over a network; the network comprising one or

more of the Internet and a nodal television distribution network (column 17).

As per claim 49, Hofmann et al teaches transmitting one or more of targeted content and targeted advertising to the user in accordance with the dynamically-matched user input pattern profile (column 17 information used to provide targeted recommendations).

As per claim 50, Hofmann et al teaches providing a database containing a plurality of user input pattern profiles representing a group of users of a terminal device, wherein each user of the group is associated with one of the plurality of user input pattern profiles; using one or more of a Bayes classifier algorithm and an affinity-day part algorithm to generate the plurality of user input pattern profiles; detecting a user input pattern based upon use of the terminal device by a current user; dynamically matching the user input pattern of the current user with one of the user input pattern profiles contained in the database; identifying the current user based upon dynamic matching of the user input pattern generated by the current user with one of the user input pattern profiles ; processing each user input pattern profile to identify a demographic type; providing a plurality of biometric behavior models wherein each biometric behavior model identifies a unique demographic type; comparing each user input pattern profile against the plurality of biometric behavior models to match each user input pattern profile with one of the biometric behavior models such that each user input pattern profile is correlated with one demographic type; and generating an audience analytic based upon the identified demographic types. (see abstract; column 8, the use of Bayes classifier algorithm; columns 17 and 18 wherein user input is collected based on usage of a terminal device; user profiles are detected and matched with previously stored profiles which considers demographic information. the user profiles are used to generate an analysis of users to determine interests, recommendations, etc.)

Hofmann et al does not explicitly teach matching the user in put pattern by comparing a

partial user input, as a current user input comprising the partial user input is being generated by

the current user, with one of the user input pattern profiles contained in the database. Cerrato

(column 7, lines 26-32) teaches an on-the-fly matching process to match a stored clickstream

profile with one as it is generated by the user. It would have been obvious to one of ordinary

skill in the art at the time of the invention to include in the system of Hofmann et al the ability to

match a stored clickstream profile with one as it is generated by the user as taught by Cerrato

since the claimed invention is merely a combination of old elements and in the combination each

element merely would have performed the same function as it did separately, and one of ordinary

skill in the art would have recognized that the results of the combination were predictable.

As per claim 51, it is the system with means for performing the method of claim 50.

Therefore, the same art and rationale apply.

As per claim 52, it is the system with means for performing the method of claim 1.

Therefore, the same art and rationale apply.

As per claim 60, Hofmann et al teaches the terminal device comprises a computer

(column 17).

As per claim 62, Hofmann et al teaches the steps are implemented in a computer, and the

computer communicates with the terminal device over a network (column 17).

As per claim 63, Hofmann et al teaches the network comprises the Internet (column 17).

As per claim 66, Hofmann et al teaches transmitting targeted content to the current user

in accordance with the dynamically-matched user input pattern profile (column 17 the user

profiles are used to generate an analysis of users to determine interests, recommendations).

As per claim 67, Hofmann et al teaches transmitting targeted advertising to the current

user in accordance with the dynamically-matched user input pattern profile (column 17 the user

profiles are used to generate an analysis of users to determine interests, recommendations).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

7.   Claims 61 and 64 rejected under 35 U.S.C. 103(a) as being unpatentable over Hofmann et

al, US 7328216, in view of admitted prior art (based on comments above).

As per claims 61 and 64, the combination of Hofmann et al and Cerrato does not

explicitly teach the terminal device comprises a television set top box and the network comprises

a nodal television distribution network. Based on applicant's admission it is old and well known

to collect data using a television set top box over a nodal television distribution network. It

would have been obvious to one of ordinary skill in the art at the time of the invention to

incorporate collection of data using a television set top box over a nodal television distribution

network. The sole difference between the primary reference and the claimed subject matter is

that the primary reference does not disclose the "collection of data using a television set top box

over a nodal television distribution network" claimed. Since each individual element and its

function are well known, the difference between the claimed subject matter and the prior art rests

not on any individual element or function but in the very combination itself – that is in the

substitution of the "nodal television distribution network" for the "internet" of the primary

reference.

Thus, the simple substitution of one known element for another producing a predictable

result renders the claim obvious.

Conclusion

8.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-

6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Lynda Jasmin can be reached on 571-272-6782. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Johnna R Loftis/
Primary Examiner, Art Unit 3624